FOR THE JUNIORS.

MEASURE OF DAMAGES OF BUYER OF GOODS AGAINST SELLER IN DEFAULT.—It is highly important to distinguish (1) the case where the buyer sues the seller for non-delivery, or for such *wrongful* delivery (as to kind, quantity, etc.,) as entitles the buyer to reject the goods, and (2) the case where the buyer receives the goods and *keeps them as his own* (the sale being executed), but is entitled to sue the seller for breach of warranty of quality.

(1) *Where the seller does not deliver at all, or the buyer rejects the goods for wrongful delivery.* Here the measure of damages is the difference between the contract price and the market value at the time and place of delivery, with such incidental expenses as the buyer may have properly incurred on account of the seller's default. In this case the goods are supposed to *rise in value*, and the seller does not deliver because he is tempted by the offer of a higher price. But this higher price the buyer must pay in order to procure the chattel which the seller had contracted to supply for less. If, then, the buyer recovers from the seller the difference between the contract price and the higher market value, this added to the contract price makes the market value, so that he can get the chattel without additional expense to himself. See 2 Sch. P. P., sec. 571; Benj. on Sales, sec. 870; Hare on Contracts, p. 537, *et seq.*; Sedgwick, Measure of Damages, p. 312–313; *Kountz v. Kirkpatrick*, 72 Pa. St. 376 (13 Am. Rep. 687), (where it is said that the market *price* will not be taken as the true market *value* at a time when prices are unnaturally inflated owing to a "corner" in the market); *Dey v. Dox*, 9 Wendell (N. Y.) 129 (24 Am. Dec. 137); *Furlong v. Polleys*, 30 Me. 491 (50 Am. Dec. 635).

In the above statement it has been supposed that the buyer has not paid the price in advance. But though the buyer has paid in advance, it is now held that the measure of damages is the same as when he has not paid (that laid down above), but the buyer recovers, of course, the money he has paid, as well as the difference between it and the market value. But in a few cases it has been said that when the buyer pays in advance he is entitled to recover as damages "the highest market value from the breach of the contract to the day of trial in court." *Brasher v. Davidson*, 31 Texas, 190 (98 Am. Dec. 525). See 2 Sch. P. P., sec. 573; Smith P. P., sec. 114 (where the authorities are said to be in conflict); Tiedeman on Sales, sec. 335.

(2) *Where the buyer receives and retains the goods, and sues the seller for breach of warranty of quality.* In this case it is now well settled that the buyer cannot recover the difference between the contract price and the market value, but the measure of the buyer's damages is, ignoring the contract price (unless as evidence of value), the difference *between two values*, viz., between the *actual* value of the chattel which proves not as warranted, and its *potential* value if it had been as warranted; or, as it is sometimes expressed, with reference especially to warranty of animals, between the *sound and unsound value*. See 2 Sch. P. P., sec. 585, citing *Jones v. Just*, L. R. 3 Q. B. 197, where the buyer sued on a warranty of manilla hemp, which was imported, and was found damaged, and it was held that the buyer's measure

of damages was the difference between the actual value of the hemp when it arrived, and what would have been the value if shipped in a suitable state. And see *Voorhees v. Earle*, 2 Hill (N. Y.), 288 (38 Am. Dec. 588); *Cary v. Gruman*, 4 Hill (N. Y.) 625 (40 Am. Dec. 290, and note); *Eastern Ice Co. v. King*, 86 Va. 97; Sedgwick, Measure of Damages, 344; Hare on Contracts, pp. 566–7.

In Hare on Contracts, p. 567, the rule is stated as above laid down, and is thus illustrated: "If, for instance, a horse warranted sound, and that would be worth $200 if the warranty were true, is sold for $400, and labors under a defect or unsoundness that reduces its value by one half [*i. e.*, to $100], the purchaser can recover only $100, and must bear the remaining loss, which is due to his having paid $200 more than the horse was worth [*i. e.*, even if he had been sound]. So, if a bale of cotton, sold for $800 and warranted sound, but which would be worth only $400 if the warranty were true, proves rotten, and will not sell for enough to cover costs and charges, the damages are $400, and the vendor may sue for and recover the rest of the purchase money; as to which there is no defense. Conversely, the purchaser is not less entitled to damages because he is a gainer by the sale; and a man who gives $300 for a lame horse on the faith of a warranty, and which is worth that sum, notwithstanding the defect, may recover $300 on proof that the horse would sell for $600 if it were sound, and thus in effect get the animal for nothing."

LIABILITY OF CORPORATIONS FOR PUNITIVE DAMAGES, OR "SMART MONEY." Where due care has been exercised in the selection of his agent, an innocent principal is ordinarily not held liable beyond compensatory damages for the wrongful act of his agent, though the circumstances be such as to call for punitive damages against the actual perpetrator of the wrong. This is based upon the absence of evil intent on the part of the principal.

As corporations can act only through their agents, this doctrine would practically relieve them altogether from liability for exemplary damages. Many of the courts accept this logical conclusion, and hold corporations thus exempt—howsoever malicious, wrongful, fraudulent, wanton, reckless or oppressive the act of the agent may have been—save where the corporation previously authorizes or subsequently ratifies the act, or is otherwise in default in selecting the agent, or in retaining him after knowledge of his unfitness. A collection of the cases maintaining the latter doctrine will be found in the authorities following: *Ricketts v. C. & O. R. Co.* (W. Va.) 25 Am. St. Rep. 901 and note; *Cleghorn v. N. Y. etc. R. Co.* (N. Y.) 15 Am. Rep. 375.

The rule last mentioned is a well-established doctrine of the Federal courts. The Supreme Court of the United States maintains that the question is not one of local law, but of general jurisprudence, upon which the Federal courts will exercise their own judgment untrammeled by State decisions; and that in no case can a corporation be held liable in the Federal courts for punitive damages, unless it participated in the wrong, expressly or impliedly, by authorizing or approving it, either before or after its commission. The leading case in that court is one which arose out of the expulsion of a passenger from a railroad train, and in which it was held that in the absence of default on the part of the corporation, compensatory damages alone could be recovered. *Lake Shore etc. R. Co. v. Prentice*,